

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CALVIN R. SILVA,)
Petitioner,) 4:04cv3292
vs.) MEMORANDUM AND ORDER
ROBERT HOUSTON,)
Respondent.)

This matter is before the court on respondent's (hereinafter, "the State's") motion to reconsider and vacate the court's Memorandum and Order of February 7, 2007, Filing No. 48, and on petitioner's unopposed motion to substitute Robert Houston as successor to Harold W. Clarke, Filing No. 52.

The State challenges the court's "sua sponte" findings in its earlier order, contends the court is without jurisdiction, and argues that the court's action was "inappropriate." The court finds the motion to reconsider should be denied. This court has jurisdiction of this case under 28 U.S.C. § 2254. The court has inherent authority to control proceedings, including attorney conduct.

The State also takes issue with several factual findings by the court. The court has considered the State's arguments and has again reviewed the facts underlying the court's conclusions and finds that the State's contentions lack merit. The court's review of the proceedings on file in this case shows that counsel has been less than forthcoming with the defendant, with Nebraska courts, and with this court in connection with Silva's case. The State cannot disclaim the actions of special prosecutor Parker many years ago; Parker acted as the State's agent and the State is bound by its representations. The State

conceded on the record at the status hearing on March 2, 2007 that it had filed its motion for mandamus because it was out of time to appeal the State District Court's original post-conviction order.

Accordingly, the court finds that the State's motion for reconsideration and to vacate should be denied.

IT IS ORDERED:

1. The State's motion for reconsideration or to vacate is denied.
2. Petitioner's unopposed motion to substitute party is granted. The Clerk of Court is directed to update the court's records to reflect the substitution of Robert Houston as the respondent in this action.
3. This action is referred to the magistrate for expedited progression.

DATED this 9th day of May, 2007.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief United States District Judge